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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-909]

Certain Steel Nails from the People's Republic of China: Notice of Court Decision Not in Harmony with the Final Results of Antidumping Duty Administrative Review and Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On October 18, 2019, the United States Court of International Trade (CIT) entered final judgment sustaining the final results of redetermination pertaining to the sixth administrative review of the antidumping duty order on certain steel nails (steel nails) from the People's Republic of China (China). The Department of Commerce (Commerce) is notifying the public that the final judgment in this case is not in harmony final results of the administrative review covering the period of review (POR) August 1, 2013 through July 31, 2014, and that Commerce is amending the final results with respect to the dumping margin assigned to Shandong Oriental Cherry Hardware Group Co., Ltd. (Oriental Cherry).

DATES: Applicable October 28, 2019.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2243.

## SUPPLEMENTARY INFORMATION:

### Background

In the *Preliminary Results*,<sup>1</sup> which remained unchanged in the *Final Results*,<sup>2</sup> Commerce treated Oriental Cherry and its affiliated companies as a single entity.<sup>3</sup> Commerce also determined that Oriental Cherry's responses were deficient, and that the use of facts otherwise available, pursuant to section 776(a) of the Tariff Act of 1930, as amended (the Act), was necessary.<sup>4</sup> As a result, Commerce determined that Oriental Cherry was not eligible for separate rate status and treated it as part of the China-wide entity, subject to a dumping margin of 118.04 percent.

On January 2, 2018, the CIT remanded the *Final Results* with respect to our decision to deny Oriental Cherry a separate rate.<sup>5</sup> The CIT remanded the *Final Results* to Commerce to reevaluate the evidence on the record regarding Oriental Cherry's eligibility for a separate rate, and to assign a separate rate to Oriental Cherry, if appropriate.

On April 20, 2018, Commerce issued the *First Remand Results*.<sup>6</sup> On remand, Commerce determined that Oriental Cherry was eligible for a separate rate, because the record supported the finding that Oriental Cherry demonstrated an absence of *de jure* and *de facto* government

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<sup>1</sup> See *Certain Steel Nails from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2013–2014*, 80 FR 53490 (September 4, 2015) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum at 11-12.

<sup>2</sup> See *Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 14092 (March 16, 2016) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM), amended by *Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 19136 (April 4, 2016).

<sup>3</sup> The Shandong Oriental Cherry Entity is comprised of: Oriental Cherry, Shandong Oriental Cherry Hardware Import & Export Co., Ltd., Heze Products Co., Ltd., Jining Huarong Hardware Products Co., Ltd., Jining Dragon Fasteners Co., Ltd., and Jining Yonggu Metal Products Co., Ltd.

<sup>4</sup> See *Final Results* IDM at 60-63.

<sup>5</sup> See *National Nail Corp. et al. v. United States*, 279 F. Supp. 3d 1372 (January 2, 2018), Slip Op. 18-1, CIT Court No. 16-00052.

<sup>6</sup> See *Final Results of Redetermination Pursuant to Remand Order in National Nail Corp. v. United States*, Consol. Ct. No. 16-00052 (April 20, 2018) (*First Remand Results*).

control.<sup>7</sup> Commerce did not, however, determine a rate using any of the production and sales information that Oriental Cherry had placed on the record in response to its questionnaires. Rather, Commerce further explained its findings from the *Final Results*, continuing to find that such information was missing from the record and that Oriental Cherry did not cooperate to the best of its ability to provide such information, and, thus, assigned Oriental Cherry the rate of 118.04 percent as the total adverse facts available (AFA) rate pursuant to section 776(b) of the Act, *i.e.*, the highest rate on the record of this proceeding.<sup>8</sup>

On June 12, 2019, the CIT remanded the *First Remand Results*. The CIT held that Commerce's application of total AFA in the *First Remand Results* was neither supported by substantial evidence, nor in accordance with law.<sup>9</sup> Specifically, the CIT held that "neither the law nor the facts support the Department's findings that: (1) none of Oriental Cherry's factors of production or its U.S. sales information was usable; (2) Oriental Cherry failed to comply with Commerce's requests for production and sales information to the best of its ability; and (3) a rate of 118.04 percent was legally and factually justified."<sup>10</sup> As such, the CIT ordered that: (1) Commerce calculate a rate for Oriental Cherry using the factors of production and U.S. sales information submitted by Oriental Cherry in the underlying review;<sup>11</sup> and (2) with respect to shooting nails supplied by Oriental Cherry's affiliate, Jining Dragon, Commerce use facts available in filling in missing necessary information, and (3) Commerce may draw an adverse

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<sup>7</sup> *Id.* at 8-12.

<sup>8</sup> *Id.* at 12 and 15-18.

<sup>9</sup> See *National Nail Corp. et al. v. United States*, Slip Op. 19-71 (June 12, 2019), CIT Court No. 16-00052 (*Second Remand Order*) at 32-42 and 47.

<sup>10</sup> *Id.* at 6 and 47.

<sup>11</sup> *Id.* at 47-48.

inference with respect to information regarding the sales of shooting nails during the period of review.<sup>12</sup> On September 5, 2019, Commerce issued its *Second Remand Results*.<sup>13</sup>

#### Timken Notice

In its decision in *Timken*,<sup>14</sup> as clarified by *Diamond Sawblades*,<sup>15</sup> the Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to section 516A of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s October 18, 2019, judgment sustaining the *Second Remand Results* constitutes a final decision of the Court that is not in harmony with Commerce’s *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*.

#### Amended Final Results

Because there is now a final court decision, Commerce is amending the Final Results with respect to Oriental Cherry. The revised weighted-average dumping margin for Oriental Cherry for the period August 1, 2013 through July 31, 2014 is as follows:

Exporter	Weighted-Average Margin (Percent)
The Shandong Oriental Cherry Entity	61.05

The CIT’s ruling was not appealed and thus represents a final and conclusive court decision. Commerce will therefore instruct U.S. Customs and Border Protection to assess

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<sup>12</sup> *Id.* at 48.

<sup>13</sup> See *Final Results of Redetermination Pursuant to Remand Order in National Nail Corp. v. United States*, Consol. Ct. No. 16-00052 (September 5, 2019) (*Second Remand Results*).

<sup>14</sup> See *Timken Co., v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

<sup>15</sup> See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

antidumping duties on unliquidated entries of subject merchandise exported by Oriental Cherry using the appropriate assessment rates.

#### Cash Deposit Requirements

The cash deposit rate for Oriental Cherry has been superseded by cash deposit rates calculated in intervening administrative reviews of the antidumping duty order on certain steel nails from China. Thus, we will not alter its cash deposit rate.

#### Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: February 11, 2020.

Christian Marsh,  
Deputy Assistant Secretary  
for Enforcement and Compliance.

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